RECENT IMPORTANT DECISIONS

BILLS AND NOTES—DISHONOR BY NONPAYMENT—MARGINAL MEMORANDA FOR PARTIAL PAYMENTS.—Suit by the holder on the following note:

"$100.00. Hampden, N. D., Sept. 2, 1909.

"On or before Sept. 2, 1910, after date, I promise to pay to the order of the Sageng Threshing Machine Company, of Minneapolis, Minn., one hundred dollars.

"Value received, with interest at 6 per cent.

"[Signed] ALBERT BENSON.

"$25 will be paid Nov. 1st, 1909.

"$25 will be paid Jan. 1st, 1910."

On the back was the indorsement: "April 15, 1910. Pd. $30" The plaintiff purchased the note in June, 1910. *Held,* that plaintiff was entitled to offer evidence that he was a holder in due course, and that the fact that the payments referred to in the marginal notations had not been made in full did not make the plaintiff a purchaser of overdue paper. Robinson and Grace, JJ., dissenting. *Union State Bank of Minneapolis* v. *Benson* (N. Dak., 1917), 165 N. W. 509.

It is to be observed that the prevailing opinion in the instant case does not expressly hold that the marginal memoranda are not part of the instrument. Instead, the court argues that the memoranda are not sufficiently positive in terms to show an intention by the parties to allow the payee or holder to compel payment of the instalments at the times indicated. In other words, the notations are deemed merely to indicate a likelihood that the payments will be made at a certain time. Nevertheless, in view of the direct statement in the notations that "$25 *will be paid* November 1st, 1909," and that "$25 *will be paid* Jan. 1st, 1910," the decision amounts to a holding that such notations are not a part of the instrument to the extent of controlling or affecting provisions expressed in the body thereof. The rule is well settled that an agreement or memorandum placed on the back of a note before signing or at the time of delivery is to be considered a part of the note, even though the effect may be to destroy its negotiability. *Kurth* v. *Farmers' & Merchants' State Bank* (Kan. 1908), 94 Pac. 798; *Bay* v. *Shrader,* 50 Miss. 326; *Kalamazoo National Bank* v. *Clark,* 52 Mo. App. 593; *Herrick* v. *Edwards,* 106 Mo. App. 633; *Swaisland* v. *Davidson,* 3 Ont. Rep. 320; *Heaton* v. *Ainley,* 108 Ia. 112; *Grimison* v. *Russell,* 14 Neb. 521. Some courts have applied the same rule where the memorandum was unsigned. *Seymour* v. *Farquhar,* 93 Ala. 292; *Blake* v. *Coleman, 22* Wis. 415. And it has been held that a stipulation printed across the margin of the body of the note that the note is to be discounted if paid before maturity is effective as a part of the instrument. *National Bank of Commerce* v. *Feeney,* 12 S. Dak. 156. The authorities hold quite generally that marginal figures in the corner of a note are not a part thereof. *Washington County State Bank* v. *Central Bank & Trust*

Co. (Tex. Civ. App.), 168 S. W. 456; *Bell* v. *Birmingham* (Ala. App.), 62 So. 971; *Williamson* v. *Smith,* 1 Cold. (Tenn.) 1, 78 Am. Dec. 478; *Poorman* v. *Mills,* 39 Cal. 345. It should be noted, however, that in none of the cases here cited, nor in any other which the writer has found, was the sweeping statement of the doctrine as to marginal figures at all necessary to the decision, since in each case the only point actually to be decided was that the marginal figures are controlled by the written words in the body of the instrument. Furthermore, the reason supporting the doctrine that marginal figures form no part of the instrument is not clear, in view of the extensive use of such figures, and especially in view of the provision in section 17 of the Negotiable Instruments Law permitting a reference to the figures in case of ambiguity or uncertainty. With reference to marginal memoranda below the signatures there is a sharp conflict of authority. In support of the view that such memoranda constitute a part of the note, see *Benedict* v. *Cowden,* 49 N. Y. 396 (with an especially good discussion by Mr. Justice Allen); *Van Zandt* v. *Hopkins,* 151 Ill. 248; *Black* v. *Epstein,* 93 Mo. App. 459; *National Bank of Commerce* v. *Feeney, supra; Specht* v. *Beindorf,* 56 Neb. 553 (though it is not clear in this case whether the provision was written into the note above or below the signature). In support of the apparent holding of the instant case that such memoranda do not constitute a part of the note, see *Fisk* v. *McNeal,* 23 Neb. 726; *Danforth* v. *Sterman* (Ia.), 145 N. W. 485; *Becker* v. *Hofsommer,* 186 Ill. App. 553. On the whole, it would seem that the cases taking the latter view are forced to indulge in technical distinctions that lead to confusion without offering a better method of getting at the real intention of the parties. If memoranda on the back of the note at the time of execution are to be considered a part of it, it is hard to see why the same interpretation should not apply to memoranda on the face of the instrument.

COMMERCE—FEDERAL EMPLOYERS' LIABILITY ACT—PERSONS SUBJECT—"INTERSTATE COMMERCE".—Plaintiff was employed by an interurban electric railway, operated wholly within the state, which received freight shipped to and from other states and transported it under through bills of lading. He was a member of a crew engaged in bonding, or cleaning the ends of the rails and connecting them by wiring, and was injured in boarding a car on which the crew rode. *Held,* that he was engaged in "interstate commerce" within the EMPLOYERS' LIABILITY ACT, April 22, 1908, c. 149, 35 Stat. 65, (U. S. Comp. St. 1913, secs. 8657-8665). *Cholerton* v. *Detroit, J. & C. Ry.* (Mich., 1917), 165 N. W. 606.

There is great conflict and contradiction among the authorities upon the question of when an employee of a common carrier is or is not working under the provisions of the federal act above referred to. It has frequently been held that, a carrier which is a link in a through line of road by which freight is carried into other states is engaged in the business of "interstate commerce," though its lines may be wholly within one state. *In re Charge to Grand Jury,* 62 Fed. 828; *U. S.* v. *Standard Oil Co.,* 155 Fed. 305; *Houston Direct Navigation Co.* v. *Ins. Co. of North America,* 89 Tex. 1; *Norfolk & W. R. R. Co.* v. *Commonwealth,* 114 Pa. 256. It has also been held that